

**Statement of  
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U.S. Department of the Interior  
Before the**

**Committee on Indian Affairs  
United States Senate**

**S. 1770, Hualapai Tribe Water Rights Settlement Act of 2017**

**December 6, 2017**

Good afternoon Chairman Hoeven, Vice Chairman Udall, and Members of the Committee. My name is Alan Mikkelsen, and I am the Deputy Commissioner at the Bureau of Reclamation (Reclamation) and Chair of the Working Group on Indian Water Settlements at the Department of the Interior (Department). I am pleased to appear before you today to discuss Indian water rights settlements, a subject I have first-hand and extensive experience with given my years working and living throughout the West.

Thank you for the opportunity to provide the Department's position on S. 1770, the Hualapai Tribe Water Rights Settlement Act of 2017, which would approve and provide authorizations to carry out the settlement of certain water right claims of the Hualapai Tribe in Arizona (Tribe). The Department has significant concerns about the Federal costs of the settlement, totaling approximately \$173.5 million in 2016 dollars, which we believe may also underestimate its true cost. In addition, the United States has significant concerns regarding the overly-broad and unnecessary waiver of federal sovereign immunity in S. 1770. For these, and other reasons, the Department cannot support S. 1770 as introduced, but is eager to work with all of the interested parties to negotiate a settlement that adheres to the *Criteria and Procedures*.

**I. Introduction**

Before I begin discussing the Hualapai settlement, I want to note that the Department supports the policy that negotiated Indian water rights settlements are preferable to protracted and divisive litigation. Indian water rights settlements have the potential to resolve long-standing claims to water, provide certainty to water users, foster cooperation among water users within a watershed, allow for the development of water infrastructure, promote tribal sovereignty and self-sufficiency, and improve environmental and health conditions on reservations. We understand that Congress plays an important role in approving Indian water rights settlements, especially when they involve federal spending, the alteration of the Tribe's reserved water rights, or the waiver of the United States' sovereign immunity, and we stand ready to work with this Committee and Members of Congress to advance Indian water rights settlements.

The framework the Department follows to guide the negotiation of Indian water rights settlements, and the support for legislation to authorize these settlements, includes four general principles set forth in the *Criteria and Procedures* published in 1990. First, settlements must be consistent with the Nation's trust responsibilities. Second, Indian tribes must receive equivalent benefits in exchange for the rights they, and the United States as trustee, release as part of a settlement. Third, Indian tribes must obtain the ability to realize value from confirmed water rights, which ensures they do not receive legal rights to water supplies that never materialize in the delivery of water. Fourth, settlements must contain an appropriate cost-share by all parties benefiting from the settlement. In our current budget climate, concerns over federal costs are an area of particular interest to the Department as we evaluate Indian water rights settlements.

## **II. Historical Context**

### **A. The Hualapai Reservation and the Hualapai Tribe**

The Hualapai Tribe's aboriginal homeland is located in the Grand Canyon and plateau region to the south of the Grand Canyon. The Tribe's main Reservation was established in January 4, 1883 by Executive Order, and is comprised of approximately 992,462 acres of tribal trust lands in northwestern Arizona. The tribal headquarters is Peach Springs, Arizona, near the southern boundary of the Reservation. The northern boundary of the main Reservation is 108 miles along the Colorado River in the Grand Canyon. There is also a 60-acre Executive Order Reservation located in the Big Sandy River Basin, approximately 40 miles south of the main Reservation.

The population of the Reservation is 1,621, of whom 1,353 are tribal members, according to the 2010 U.S. Census. The total tribal membership in 2010, including members living off the Reservation, was 2,300. The majority of on-Reservation residents reside in or near Peach Springs.

The primary sources of employment on the Reservation are recreation, tourism, and tribal and federal government services. The Grand Canyon is the primary source of tourism on the Reservation, with considerable tourism activities located at the Tribe's tourism center, Grand Canyon West, and from river rafting in the Colorado River. The Tribe also owns and operates the Hualapai Lodge, located in Peach Springs.

In 2007, the Tribe completed Grand Canyon West, which includes the Skywalk, a horseshoe-shaped glass-bottom walkway that extends out from the rim of the Grand Canyon. Annual visitation at Grand Canyon West has steadily increased since its opening, and exceeded one million visitors for the first time in 2015, making it the primary economic driver on the Reservation.

### **B. Water Resources of the Hualapai Reservation**

The main Reservation is located primarily in the Colorado River Basin with a small portion in the Upper Verde River Basin. The majority of on-Reservation streams are ephemeral. Several springs discharging from the regional aquifer at the bottom of canyons can provide baseflow for short perennial reaches, which ultimately discharge to the Colorado River. The largest of these



perennial streams are Diamond Creek and Spencer Creek, with mean annual flows of over 3,700 acre-feet per year (afy) and 4,600 afy, respectively. The springs that feed these streams are remotely located in deep canyons and are not practically accessible for use by the Tribe. Smaller springs on the plateaus provide water for livestock purposes.

Groundwater resources on the Reservation occur in varying degrees of magnitude, depending on the type and location of water-bearing zones. The Department is conducting groundwater studies in an effort to accurately characterize the groundwater resources on and near the Reservation.

The major water use on the Reservation occurs in two locations: the town of Peach Springs and Grand Canyon West. Three wells serve the Peach Springs public water supply system and are located approximately 6.5 miles southwest of the town. The current level of water use in Peach Springs is approximately 250 afy. All supply wells produce water from the Truxton aquifer, an aquifer in the Truxton Valley that extends off the Reservation. Water for Grand Canyon West is supplied via a pipeline from a well approximately 30 miles away. Current water use at Grand Canyon West is 40 afy. Current cumulative water use for the Reservation is approximately 300 afy.

### **III. Proposed Hualapai Tribe Settlement Legislation**

The Tribe claims water rights in the Colorado, Verde, and Bill Williams River basins. Negotiations regarding potential settlement of the Tribe's water rights claims have been ongoing since 2011, when the United States established a negotiating team to negotiate a comprehensive settlement of all the Tribe's water rights within Arizona. The settlement was divided into two phases; the first phase addressed reserved water rights to several off-reservation tracts in the Bill Williams River Basin and resulted in the Bill Williams River Water Rights Settlement Act of 2014, P.L. 113-223. The second phase, addressed in S. 1770, covers additional water rights in the Bill Williams River Basin, as well as the remainder of the Tribe's water rights in the Colorado River Basin and the Verde River Basin.

S. 1770 would resolve the Tribe's remaining water rights claims in Arizona; ratify, and confirm the Hualapai Tribe water rights settlement agreement among the Hualapai Tribe, the United States, the State of Arizona, and others; and authorize funds to implement the settlement agreement. The bill would reallocate 4,000 acre-feet of fourth-priority Central Arizona Project (CAP) non-Indian agriculture priority water to the Tribe to be used for any purpose on or off the Reservation within the lower Colorado River basin in Arizona.

S. 1770 authorizes the appropriation of a total of \$173,500,000 for the following purposes:

- \$134,500,000 to design and construct the Hualapai Water Project (Project), consisting of approximately 70 miles of pipeline from the Colorado River to Peach Springs and Grand Canyon West, two water treatment plants, several pumping plants, and other appurtenant features with an overall capacity designed to deliver 3,414 afy;
- \$32,000,000 for the Hualapai OM&R Trust Account, to be used by the Tribe for operation, maintenance, and replacement of the Project;

- \$5,000,000 for the Secretary of the Interior for operation, maintenance, and replacement of the Project until such time that title of the Project is transferred to the Tribe by the Secretary; and
- \$2,000,000 for the Secretary to provide technical assistance to the Tribe, including operation and management training for the Project.

#### **IV. Department of the Interior Positions on S. 1770**

While the Department continues to strongly support Indian water rights settlements, the Department has significant concerns about S. 1770 and cannot support the legislation as introduced.

The Department is concerned about the scope and size of the Project given current and projected water uses on the Reservation. In addition, we believe the cost to construct a 70-mile pipeline from the Colorado River lifting water over 4,000 feet in elevation will greatly exceed the costs currently contemplated in S. 1770 and might trigger significant additional litigation.

The Department believes it should evaluate the water rights, water availability, and water resource needs of the tribe from a holistic viewpoint, including information regarding available groundwater resources. Completing ongoing groundwater studies will inform the Department's views on the proposed pipeline.

The *Criteria and Procedures* require us to analyze whether the settlement "include[s] non-Federal cost sharing proportionate to the benefits received by the non-Federal parties." We believe that the State parties can and should contribute a commensurate share of the cost of the settlement in return for the benefits they will receive. As an example, the state of Montana, with barely one million residents, has contributed tens of millions of dollars in appropriated settlement funds to Montana Indian Water Rights Settlements.

S. 1770 includes an overly broad waiver of sovereign immunity provision - which allows for suits against the United States by "[a]ny landowner or water user in the Verde River Watershed or the Colorado River basin within the State of Arizona" and for the interpretation of previously enacted statutes. This waiver of sovereign immunity is unnecessary and overly broad and presents a significant concern for the United States.

S. 1770 also includes several additional provisions that the Department is concerned about, including an unnecessary reference to 25 USC Section 211, which we believe is of limited application based on more current statutes; ambiguous settlement fund management language; and unnecessary obligations placed on the Bureau of Reclamation with respect to the proposed Project.

As a final matter, the Department must register serious concern about provisions of S. 1770 and the settlement agreement that prohibit the Tribe and the United States from objecting to any use of groundwater outside the boundaries of the Reservation, even if those uses interfere with acknowledged Federal reserved groundwater rights.



## **V. Conclusion**

The Department recognizes that the Tribe, the State of Arizona, and the state parties want to achieve a Hualapai water settlement and have devoted substantial efforts to that goal. The Department shares this goal and is committed to working with the Tribe and the parties to reach a final and fair settlement of the Tribe's water rights claims that adheres to the *Criteria and Procedures*, and that we can fully support.